

2000

# State of Utah v. Alan Val McDonald : Brief of Appellant

Utah Court of Appeals

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Attorney for Appellee; J. Frederic Voros, Jr.; Assistant Attorney General.

Attorney for Appellant; Michael L. Humiston.

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## Recommended Citation

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IN THE UTAH COURT OF APPEALS

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**THE STATE OF UTAH,**  
Plaintiff and Appellee

vs.

**ALAN VAL McDONALD,**  
Defendant and Appellant

Case No. 20000549-CA

---

Case Priority: 2 (Defendant Not Incarcerated)

**BRIEF OF APPELLANT**

Appeal  
from a conditional plea entered in  
The Eighth District Court in and for  
Uintah County  
Hon. John R. Andersen, presiding

Attorney for Appellee:

J. Frederic Voros, Jr.  
Assistant Attorney General  
160 East 300 South, 6<sup>th</sup> Floor  
Salt Lake City, Utah 84114-0854  
(801) 366-0180

Attorney for Appellant:

Michael L. Humiston  
23 West Center Street  
P.O. Box 486  
Heber City, Utah 84032  
(435) 654-1152

COURT OF APPEALS

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Exhibit A, Affidavit of Probable Cause, Uintah County, January 27, 1999

Exhibit B, Minute Entry, Fourth District Court, Wasatch County, December 2, 1998

Exhibit C, Motion and Order for Dismissal, Wasatch County, December 18, 1998

Exhibit D, Motion and Order to Dismiss, Duchesne County, April 23, 1999

Exhibit E, Ruling (Denying Motion to Suppress), Uintah County, July 22, 1999

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<u>Wong Sun v. United States</u> , 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963)	4

## JURISDICTIONAL STATEMENT

The Utah Court of Appeals has jurisdiction to hear this matter pursuant to U.C.A. §78-2A-3(2)(e), inasmuch as it is an appeal from a court of record in a criminal case and does not involve a first degree or capital felony.

## STATEMENT OF ISSUES AND STANDARD OF REVIEW

The issue on appeal is whether the trial court erred in denying Appellant's motion to suppress. A trial court's ruling on the suppression of evidence, in this case evidence constituting the "fruit of the poisonous tree", is a question of law which is reviewed for correctness, according no particular deference to the trial court. Corbett v. Seamons, 904 P.2d 229 (Utah 1995).

The trial court's determination of whether res judicata requires that evidence be suppressed also presents a question of law, subject to a correctness analysis. Macris & Associates, Inc. v. Neways, Inc., 986 P.2d 784, rehearing denied (Utah App. 1999).

The matter was preserved for appeal, as set forth in the Addendum, Exhibit E, Order denying Appellant's Motion to Suppress, July 23, 1999. The matter was also preserved for appeal by stipulation of the parties, as set forth on pages 109 and 125 of the trial record.

## CONSTITUTIONAL AND STATUTORY PROVISIONS

United States Constitution, IV<sup>th</sup> Amendment

Constitution of Utah, Article I, Section 14

## STATEMENT OF THE CASE/RELEVANT FACTS

Appellant was stopped at an administrative roadblock in Wasatch County on May 23, 1998. Based on items found during a search of Appellant's vehicle at the roadblock, he was charged with various misdemeanors in Wasatch County, and a search warrant was issued and executed on May 28, 1998, at his residence in Uintah County (See Addendum, Exhibit A). Based on items found in Appellant's residence, he was charged in Duchesne County with several counts of theft and on January 27, 1999, was charged in Uintah County with Unlawful Possession of a Controlled Substance (Methamphetamine), a Third Degree Felony, Possession of Paraphernalia, a Class B Misdemeanor, Possession of Stolen Property, a Second Degree Felony, Possession of Dangerous Weapon by a Restricted Person, a Third Degree Felony, and Interference with a Peace Officer Making a Lawful Arrest, a Class B Misdemeanor.

On December 2, 1998, Judge Guy R. Burningham of the Fourth District Court ruled that the roadblock in Wasatch County was improper, and granted a motion to suppress all evidence obtained at the roadblock (See Addendum, Exhibit B). The charges against Appellant in Wasatch County were dismissed on December 18, 1998 (See Addendum, Exhibit C). Appellant then moved that the charges in Duchesne County, all of which arose out of the warrant executed in Uintah County on May 28, 1998, be dismissed. On April 23, 1999, the charges were dismissed in Duchesne County as "fruit of the poisonous tree", and because the Fourth District ruling in Wasatch County constituted res judicata (See Addendum, Exhibit D).

On June 2, 1999, Appellant filed a motion in the Eighth District Court for Uintah County to suppress all evidence obtained pursuant to the search warrant, inasmuch as the motion in Duchesne County to suppress evidence arising out of the same warrant had been granted. This motion was denied on July 22, 1999 (See Addendum, Exhibit E). On April 5, 2000, Appellant entered a conditional plea of no contest to charges of Unlawful Possession of a Controlled Substance and Possession of a Dangerous Weapon by a Restricted Person, both third degree felonies, reserving the right to appeal the suppression issue. Sentence was imposed and a Notice of Appeal filed on June 13, 2000. At that time the trial court also signed a Certificate of Probable Cause, suspending execution of the sentence pending this appeal.

#### SUMMARY OF ARGUMENTS

1. The evidence obtained pursuant to the search warrant in Uintah County must be suppressed, because the warrant itself was the fruit of a search which was later ruled to be illegal. The Uintah County search warrant thus constitutes “fruit of the poisonous tree”.
2. The evidence obtained pursuant to the search warrant in Uintah County must be suppressed, because evidence obtained from the same search warrant was suppressed in Duchesne County. The State is thus collaterally estopped from introducing evidence from the same search into a collateral proceeding.

## ARGUMENT

## I

**The Evidence obtained pursuant to the Search Warrant in Uintah County constitutes “Fruit of the Poisonous Tree,” and must therefore be suppressed.**

It is well established that evidence obtained as a result of an illegal search or seizure must be excluded. Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968); State v. Larocco, 794 P.2d 460 (Utah 1990). Likewise, the exclusionary rule applies not only to evidence obtained directly through an illegal search, but also to evidence obtained by exploitation of the illegality, unless the evidence was obtained by means sufficiently distinguishable to be purged of the primary taint. Wong Sun v. United States, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963); State v. Arroyo, 796 P.2d 684 (Utah 1990); State v. Ramirez, 817 P.2d 774 (Utah 1991). The illegality of the roadblock in Wasatch County was established by Judge Burningham’s ruling (See Addendum, Exhibit B), State v. Sims, 881 P.2d 840 (Utah 1994). The warrant executed in Uintah County was based entirely on evidence obtained through the illegal roadblock (See Addendum, Exhibit A). There was no other basis for the warrant other than the evidence obtained at the roadblock, and thus there is no basis for the warrant sufficiently distinguishable to be purged of the primary taint. Nor can a “good faith” exception be invoked, or there would have been no basis for invalidating the administrative roadblock in Wasatch County in the first place. The roadblock in Wasatch County was likewise conducted in “good faith”, in reliance upon a facially valid order. This did not prevent the search from being invalid, and there is no intervening factor that would



allow a “good faith” exception to apply in Uintah County when no such exception applied in Wasatch County to the underlying search. The search warrant in Uintah County and all evidence obtained through it constitute “fruit of the poisonous tree”, and must be suppressed.

## II

### **The State is collaterally estopped from introducing any Evidence obtained pursuant to the Uintah County Search Warrant**

The State is barred under the collateral estoppel, or issue preclusion, aspect of res judicata from admitting evidence obtained through the Uintah County search. Collateral estoppel requires that there be (1) an identity of issues between the two cases, (2) a final judgment on the merits of that issue in the prior action, (3) the issue was fully, fairly, and competently litigated in the prior proceeding, and (4) the opposing party in the current action was a party or privy of a party in the previous action. Glencore, Ltd. v. Ince, 972 P.2d 376 (Utah 1998). Clearly the identical issue was litigated in both the Duchesne and Uintah County cases, as the same search warrant was at issue in both cases, and the evidence relied upon as probable cause was already at issue in the Wasatch County case. A final judgment on the merits of the issue of validity of the search was entered in both Wasatch and Duchesne Counties (See Addendum, Exhibits B and C). It’s significant to note that both Duchesne and Uintah Counties are in the Eighth District. The issue was fully, fairly, and competently litigated in both Wasatch and Duchesne counties before it was presented in Uintah County. Indeed, as noted by the minute entry of the hearing in Wasatch County (Exhibit B), at least four attorneys argued the issue. Finally, there is no question that the

State of Utah, as prosecutor, is in privity with itself as acting through the various counties. The Wasatch and Duchesne County rulings fulfil all of the criteria to constitute res judicata in regard to the Uintah County case. Indeed, inasmuch as the identical warrant and search were at issue in the Duchesne County case, it is hard to imagine how a case could more completely satisfy the requirements of res judicata. The evidence obtained as a result of the search in Uintah County must be suppressed in the Uintah county case as a matter of law, and the trial court's ruling denying Appellant's Motion to Suppress must be reversed.

#### CONCLUSION

Inasmuch as the search warrant executed in Uintah County on May 28, 1998, would not have been obtained but for the illegal search conducted in Wasatch County on May 23, 1993, all evidence obtained pursuant to the Uintah County warrant must be suppressed. In addition, the ruling in Duchesne County suppressing evidence from the Uintah County search in the Duchesne County charges constitutes res judicata, and evidence from the same search must likewise be suppressed in Uintah County. Inasmuch as the trial court erred in denying Appellant's Motion to Suppress, the trial court ruling should be overturned and the matter returned to the trial court in accordance with the terms of Appellant's conditional plea.

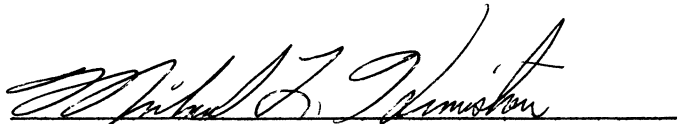
DATED this 20<sup>th</sup> day of February, 2001.

---

Michael L. Humiston  
Attorney for Appellant

## CERTIFICATE OF SERVICE

I hereby certify that two copies of the foregoing Brief of Appellant were mailed, first class postage prepaid, to J. Frederic Voros, Jr., Assistant Attorney General, 160 East 300 South, 6<sup>th</sup> Floor, Salt Lake City, Utah 84114-0854, this 20<sup>th</sup> day of February, 2001.



---

Michael L. Humiston

## **ADDENDUM**

---

IN THE EIGHTH JUDICIAL DISTRICT COURT  
COUNTY OF UINTAH, STATE OF UTAH

---

STATE OF UTAH	}	
	}	
PLAINTIFF,	}	AFFIDAVIT OF PROBABLE
VS.	}	CAUSE
	}	
	}	
ALAN VAL MCDONALD	}	
(D.O.B. 10-02-58)	}	CASE NO.
	}	
	}	
DEFENDANT.	}	

---

STATE OF UTAH        }  
                              }       SS  
COUNTY OF UINTAH    }

COMES THE AFFIANT, having been duly sworn, and deposes and says as follows:

1. I am a duly certified police officer in the State of Utah and am currently employed by the Vernal Police Department where my duties include the investigation of alleged criminal offenses. I am also currently assigned to the Uintah Basin Narcotic Strike Since, and have been involved in the investigation of numerous drug related offenses.

2. On May 22, 1998, the Vernal Police Department received a fax from Sergeant Wally Hendricks with the Duchesne County Sheriff's Office. The fax advised that a residential burglary had occurred in the recent past, and that approximately 15 firearms had been taken, as well as 8,000 rounds of ammunition. Sgt. Hendricks also sent a picture of possible labels that were unique to the ammunition. According to Hendricks, the ammunition that was taken was very old, and had been manufactured by the victim in that particular case.

3. On May 23, 1998, While assisting the Utah Highway Patrol with an Administrative Checkpoint on U.S. highway 40 at milepost 43, between Duchesne and Heber, Officers made contact with Alan Mcdonald, and subsequently recovered a .45 semi-automatic pistol, and a box of the ammunition bearing the label of the stolen ammunition reported by Sgt. Hendricks, from his recent residential burglary case. The .45 auto, and a .22 pistol were taken into custody by officers at the scene.

4. Alan McDonald, the owner of the vehicle, was arrested following the recovery of the firearms and several articles of drug paraphernalia from his vehicle.

5. I was then advised by the D.W.R. officers that in an instance in which the driver of a vehicle is arrested by thier agency, and no other registered owner is present, the vehicle must be impounded. I then assisted D.W.R. officers by performing an inventory of the vehicle. During the inventory, I located a small black container which contained a substantial number of .25 automatic, full metal Jacket ammunition in a zipper pouch on a black duffel bag belonging to Alan McDonald. In addition, a small glass smoking pipe containing a white-colored residue, similar to those used to smoke Methamphetamine was also recovered in a "fishnet" pouch on the same duffel bag.

6. Following McDonald's arrest, I was asked to conduct an interview with McDonald. McDonald was advised of his Miranda rights. McDonald advised that he understood his rights, and agreed to speak with me.

7. McDonald told me that the .45 auto had been in his truck for several days, and that an individual named Kyle Stringham had left it there after the two of them had shot the gun.

8. McDonald admitted to using Methamphetamine on the previous evening, and that when he uses, he prefers to smoke or snort, but stated that he does not use needles.

9. On May 28, 1998, this affiant assisted the Duchesne County Sheriff's Office with the execution of a search warrant. During the execution of the warrant, this affiant and several other officers proceeded to a small camper, which was located on the west side of the residence. Officers found that the door to the camper to be locked, and the door had to be pulled open. While inside the camper, I observed a framed picture lying flat on the table. On the glass portion of the picture, was a piece of paper that had been rolled up to form a snort tube. Also on the mirror was a white powder substance, which I believed to be Methamphetamine.

10. I also observed a Colt .25 caliber semi-automatic handgun lying in the middle of the bed, toward the south portion of the trailer. I then checked the weapon, and found that the magazine contained full metal jacketed bullets, but did not have a live round in the chamber.

11. As the search of the trailer continued, additional articles of drug paraphernalia were located inside several drawers and cabinets. Each of the items were located in areas which could reasonably contain or conceal articles which were named in the search warrant.

12. Several documents were also recovered which showed "Alan or Nikki McDonald". These documents included a Utah registration certificate, and warning citation issued to "McDonald" by the Utah Highway Patrol. Several pictures depicting children, and older persons (perhaps family) were observed within the trailer.

13. A set of measuring scales was also recovered from within a 9" x 9" metal tin. The scales contained a white powder-like residue, which I believed to be Methamphetamine. The scales were located in an overhead cupboard above the counter/sink, which was adjacent to a cupboard containing a box of sandwich bags. Several of the bags were stacked in the right-hand corner of the cupboard, and did not appear to have been in that particular location for any length of time, due to the fact that no dust or debris had collected on them, as was the case with other miscellaneous articles within the cupboards.

14. After finding the sandwich bags, the refrigerator was opened, and found to be completely empty.

15. Each of the items were packaged at the kitchen table, and were photographed by me. After the removal of the abovementioned items, the camper was again locked.

16. After several hours of investigation at the residence, officers observed a truck approaching the residence on its private drive. The vehicle approached slowly, and as the vehicle neared the residence, it became apparent that the vehicle was that of Alan McDonald. The vehicle stopped approximately 100 yards from the residence, and began to back-up. Uintah County Deputy Bo Faircloth and I began to chase McDonald's vehicle on foot, yelling, "Stop! Police!", while illuminating ourselves with flashlights. The vehicle continued to accelerate in reverse, and swiftly pulled away from us, and continued away from the residence with the engine screaming and dust blowing. The private drive is approximately 350 yards long, and is filled with mud puddles and potholes. The smell of the engine was quite noticable as Faircloth and I continued to run after the vehicle.

17. At this point, Deputies Shaun Abplanalp, Robert Roth and John Laursen gave chase in a mini-van which was on-scene for transporting potential prisoners. The van is equipped with emergency lights, and bears highly reflective letters and is similar to every other Uintah County (Sheriff's Department) Fleet vehicle.

18. Due to the fact that the drive is very narrow, the mini-van was also forced to negotiate the driveway in reverse, dragging bottom, and scraping the soil. As the mini-van passed us, Faircloth and I stopped running, and began to walk. At this point, McDonald's vehicle had reached the paved road (6000 North), and proceeded eastbound. Faircloth and I watched as McDonald's vehicle neared the intersection of 6000 North, and Whiterocks Road, (approximately 5750 East).

19. The vehicle then stopped at the intersection, and it appeared as though McDonald's vehicle was turning left to head northbound on Whiterocks Road. The vehicle then stopped, and after a few seconds, made a u-turn, and began to head west on 6000 North at about idle speed, toward the officers in the mini-van.

20. Officers then pulled in front of McDonald's vehicle, and drew their duty weapons, and were able to take McDonald into custody without incident. It appeared as though McDonald had fled in an effort to get rid of some type of contraband, and after discarding the item or items, he submitted to the officers. After securing McDonald, officers searched the intersection and surrounding area in which McDonald's vehicle had stopped momentarily, but found nothing.

21. A small creek runs north/south, and parallels Whiterocks Road on the east side, and runs under the road and 6000 North. It is possible that whatever the items of contraband were, if any, may have been thrown into the running water, and swept downstream.

22. After officers arrived back at the residence with McDonald, he advised that he was unaware that the persons chasing him were law enforcement officers.

23. While at the residence, McDonald was advised of his rights per Miranda. McDonald advised that he understood his rights, and agreed to speak with officers. McDonald was then questioned by Sgt. Hendricks, regarding his involvement in a residential burglary.



24. Over the course of several hours I spoke with McDonald on several occasions. McDonald advised that was living in the camper, and informed me that the pictures in the camper were of family members.

25. McDonald stated that the .25 auto pistol had been in the camper for several days, and stated that a friend had brought the gun, and left it there, however, he would not disclose the name of the individual in question, saying, "A friend who wasn't involved." (referring to the burglary).

26. I then spoke with McDonald regarding his current situation and his use of Methamphetamine. McDonald acknowledged the fact that he is "addicted" to Methamphetamine.

27. Prior to leaving the premises, I informed McDonald that I had locked the door to the camper, and asked if he had a key. He informed me that he did, and also stated that his Daughter also had a key to the camper door.

28. As a result of his involvement in the Duchesne County Burglary, Alan McDonald was taken into custody, and was later transported to the Duchesne County Jail by Sgt. Hendricks.

29. Prior to McDonald being transported to the Duchesne County Jail, I advised him that since he was cooperative with officers regarding the burglary, I would attempt to contact him on a later date, and serve him with a summons, rather than an arrest warrant. McDonald then gave me a pager number, and told me that he would return my calls. Since that time, I have paged McDonald's number, but received no return phone calls. At the time that this affidavit was prepared McDonald's pager was no longer in service.

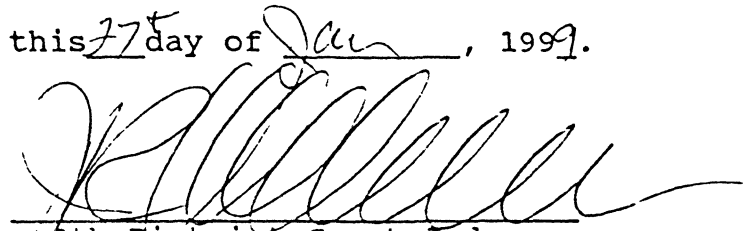
30. Based on the above information, I hereby request that a warrant of arrest be issued for Alan Val McDonald, D.O.B. 10/02/58 upon the charges of Possession of Methamphetamine, Possession of drug paraphernalia, possession of a stolen firearm, possession of a handgun by a restricted person, and interfering with a police officer.

STATE V. ALAN VAL MCDONALD (CONT'D)

Dated this 27<sup>th</sup> day of Jan, 1999

  
\_\_\_\_\_  
Affiant

Subscribed and sworn before me this 27<sup>th</sup> day of Jan, 1999.

  
\_\_\_\_\_  
8th District Court Judge

4th DISTRICT COURT - HEBER COURT  
WASATCH COUNTY, STATE OF UTAH

---

STATE OF UTAH,	:	MINUTES
Plaintiff,	:	SUPPRESSION HEARING
	:	
vs.	:	Case No: 985500013 MD
	:	
BART RON WOODCOX,	:	Judge: GUY BURNINGHAM
Defendant.	:	Date: December 2, 1998

---

PRESENT

Clerk: diannb

Prosecutor: PULLAN, DEREK P

Defendant not present

Defendant's Attorney(s): ESPLIN, MICHAEL D.

DEFENDANT INFORMATION

Date of birth: February 5, 1959

Audio

Tape Number: 02 Tape Count: 2700

CHARGES

1. DRIVING UNDER THE INFLUENCE OF ALC/DRUGS - Class A Misdemeanor  
Plea: Not Guilty

HEARING

Mr. Pullan argued on behalf of the State of Utah.

Argued by Mr. Esplin.

Argued by Ms. Wendy Hufnagel (Counsel on an unrelated case argued at the same time whereas the issues are the same.)

Argued by Mr. Dean Zabriskie (counsel on an unrelated case argued at the same time whereas the issues are the same.)

Response and argued by Mr. Pullan.

Response by Ms. Hufnagel.

Response by Mr. Zabriskie.

Response by Mr. Esplin.

In this matter, the Court finds that the notice which was published and signed by a magistrate was defective as it pertains to the road block. Therefore, the motion to suppress is granted.

Case No: 985500013  
Date: Dec 02, 1998

---

TIME: 3:07 PM Mr. Zabriskie to prepare an appropriate order for all four cases.

Dan H. Matthews, #5511  
Wasatch County Attorney  
Derek P. Pullan, #6633  
Deputy Wasatch County Attorney  
55 West Center Street  
Heber City, Utah 84032  
Telephone: (435) 654-2909

---

IN THE FOURTH JUDICIAL DISTRICT COURT  
IN AND FOR WASATCH COUNTY, STATE OF UTAH

---

THE STATE OF UTAH,	*	MOTION AND ORDER FOR
		DISMISSAL
Plaintiff,	*	
	*	
-V-	*	
ALAN MCDONALD,	*	Case No. 981500055
Defendant.	*	

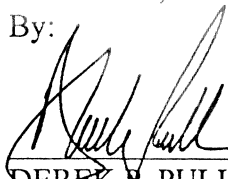
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COMES NOW THE STATE OF UTAH, by its attorney, Derek P. Pullan, Deputy Wasatch County Attorney, and hereby moves that this case be dismissed. The reason for the dismissal is that on December 2<sup>nd</sup>, 1998, Judge Guy R. Burningham granted Defendant's Motion to Suppress, excluding all evidence of culpable conduct.

DATED this 16 day of December, 1998.

STATE OF UTAH, Plaintiff

By:



DEREK P. PULLAN

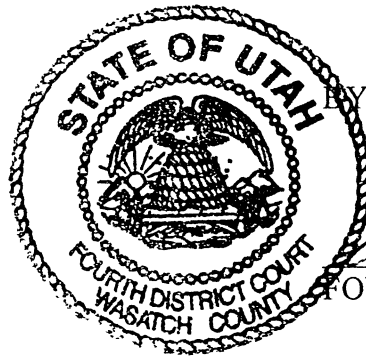
Deputy Wasatch County Attorney

## ORDER OF DISMISSAL

BASED UPON THE FORGOING MOTION of Plaintiff, and for good cause shown, it appearing to the satisfaction of the Court;

IT IS HEREBY ORDERED that the above-captioned matter be dismissed without prejudice.

DATED this 18 day of December, 1998.



BY THE COURT:

  
FOURTH DISTRICT COURT JUDGE

HERBERT WM. GILLESPIE #1191  
DUCHESNE COUNTY ATTORNEY  
ROLAND URESK #3307  
DEPUTY DUCHESNE COUNTY ATTORNEY  
Attorney for Plaintiff  
P.O. Box 206  
Duchesne, Utah 84021  
(435) 738-0184

FILED  
DISTRICT COURT  
DUCHESNE COUNTY, UTAH

APR 23 1999

JOANNE MCKEE CLERK  
BY 7/1 DEPUTY

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF UTAH  
DUCHESNE COUNTY, DUCHESNE DEPARTMENT

---0000000---

STATE OF UTAH,	:	
	:	MOTION AND ORDER
Plaintiff,	:	TO DISMISS
	:	
vs.	:	Criminal No. 981800057
	:	
ALAN VAL McDONALD,	:	
	:	Judge A. Lynn Payne
Defendant.	:	

---0000000---

The State of Utah, by and through its counsel, Herbert Wm. Gillespie, Duchesne County Attorney, moves the Court to dismiss the above-entitled case without prejudice. Grounds for this Motion are that the road block in Wasatch County was ruled invalid and Judge Guy Burningham ordered evidence suppressed. The case in Wasatch County is res judicata for this case. Additional evidence in this case is believed to be "fruit of the poisonous tree" from evidence discovered in the Wasatch County road block.

DATED this 14 day of April, 1999.

Herbert Wm. Gillespie  
HERBERT WM. GILLESPIE  
Duchesne County Attorney

**ORDER**

Based upon the Motion of the State of Utah, good cause appearing therefore, it is hereby ordered that the above-entitled matter be dismissed without prejudice.

DATED this 22 day of April, 1999.

BY ORDER OF THE COURT

  
\_\_\_\_\_  
DISTRICT COURT JUDGE



FILED  
DISTRICT COURT  
UINTAH COUNTY, UTAH

JUL 23 1999

BY JOANNE MC GEE CLERK  
DEPUTY

IN THE EIGHTH JUDICIAL DISTRICT COURT  
IN AND FOR UINTAH COUNTY, STATE OF UTAH

STATE OF UTAH,

Plaintiff,

vs.

ALAN VAL MCDONALD,

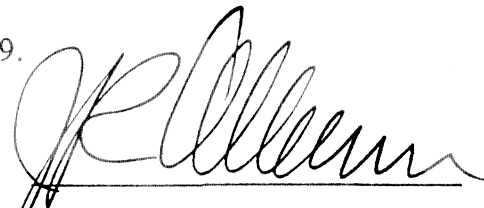
Defendant.

RULING

CASE NO. 991800030

Defendant's Motion to Suppress is denied based on State's memorandum in opposition and cases cited therein.

DATED this 22 day of July, 1999.

  
John R. Anderson, District Judge